

SENWORK TIMBERS (PVT) LTD**Versus****NATIONAL RAILWAYS OF ZIMBABWE**HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 28 JULY 2015**Opposed Court Application***Mrs J. Magosvongwe* for applicant
Advocate P. Dube for respondent

KAMOCHA J: This is an application wherein the applicant seeks condonation of the late filing of an application for the rescission of a judgment which it became aware of on 29 September 2014.

The applicant has been represented by its present legal practitioners since October 2014 but applicant only filed this application for condonation on 5 December, 2014. There is no acceptable explanation why it was unable to act timeously. There is no explanation why the application was not filed in October 2014.

Applicant gave lack of funds as the reason for failure to act timeously. The applicant does not explain how it lacked funds when it was expected to act and how it eventually managed to source funds to file the application for condonation belatedly.

The applicant's legal representative conceded that there were gaps in the explanation of the financial constraints faced by the applicant. She, however, urged the court to afford the parties a chance to deal with the matter on the merits.

The applicant also failed to clearly articulate its defence on the merit. For instance it sought an advance payment for the 720 railway timber sleepers and was paid the sum requested.

All that applicant was able to supply were 45 sleepers out of the 720. Out of the 45 sleepers supplied 3 were defective. The applicant has no clear defence at all.

In the result the court ordered that the application be and is hereby dismissed with costs.

Danziger & Partners, applicant's legal practitioners
James, Moyo-Majwabu & Nyoni, respondent's legal practitioners